

## CHAPTER 6

## BANKRUPTCIES

**30601. Wage Earner's Plan Under the Bankruptcy Act, Chapter 13**

a. A wage earner's plan under Chapter 13 is one relating to future earnings of the debtor and relief is predicated upon the primary concept that while the debtor is unable to pay existing debts, a plan to effect a composition or extension out of future earnings has been presented to the bankruptcy court for approval. The plan must provide for submitting such earnings or wages to the supervision and control of the court for the purpose of enforcing the plan.

b. When the plan is confirmed by the court, its provisions are binding upon the debtor and all creditors of the debtor, whether or not they are affected by the plan, have accepted it, have filed their claims, or whether or not their claims have been scheduled or allowed, or are allowable.

c. The court has authority to issue orders needed to implement the provisions of the plan including orders directed to an employer of the debtor.

d. The retired pay of retiree is subject to payment to the trustee appointed by the court pursuant to Chapter 13 of the Bankruptcy Act. The payment by accounting, finance, disbursing officers of part of the retiree's pay in response to a court order issued in a Chapter 13 Wage Earner's Plan case does not violate 31 U.S.C. 203. Compliance with such a court order gives the government a valid acquittance against the member since the court order is binding on the retiree.

e. If the United States is both the debtor and creditor when the member files a Chapter 13 Wage Earner's Plan, the government's priority under 31 U.S.C. 191 may be asserted in the absence of a judicial determination to the contrary.

f. The rules governing the payments of retired pay made to the trustee appointed by the court pursuant to a Chapter 13 Wage Earner's Plan are set forth in these Military Service regulations:

(1) Army: AR37-103, chapter 16

(2) Navy: Navy Comptroller Manual 041355.3

(3) Marine Corps: Navy Comptroller Manual 041355.3

(4) Air Force: AFR 177-108, and AFR 110-24.

g. All delinquent taxes which may be found due the United States from a retiree participating in a Chapter 13 Wage Earner's Plan which have not been assessed before the date of confirmation of the plan and all taxes which may become due must be paid by the debtor. The United States may accept the provisions of any plan dealing with the assumption, settlement, or payment of any such delinquent taxes.

(1) When the cognizant Defense Finance and Accounting Service (DFAS) Center sends the entire amount of the retiree's pay to the court-appointed trustee, the IRS Notice of Levy should be forwarded to the court-appointed trustee for disposition.

(2) When the cognizant DFAS Center sends part of the pay due the retiree to the court-appointed trustee the IRS Notice of Levy should be processed in the normal manner against the amount due the retiree. The court-appointed trustee is provided a copy of the IRS Notice of Levy and notified of the action taken in establishing the liquidation procedures on a continuing Notice of Levy.

**30602. Regular Bankruptcy**

A retiree is within the class of persons specified in section 4 of the Act of 1 July 1898, chapter 541,30 Statute 547, as amended, 11 U.S.C. 22(a), as entitled to the benefits of voluntary bankruptcy.

a. Continuing deductions from retired pay without the retiree's consent after the filing of a petition in bankruptcy listing the debt(s) to the government is improper in view of the pending bankruptcy proceedings. A debt included on a bankrupt's schedule of debts is not subject to involuntary collection. All involuntary deductions to liquidate the listed indebtedness must be promptly discontinued upon notice or actual knowledge of the filing of a bankruptcy petition.

Amounts withheld after the date the bankruptcy petition is filed must be refunded to the retiree.

b. Upon notice or actual knowledge of the filing of a bankruptcy petition when the retiree has listed the United States as a creditor, the DFAS Center:

(1) Requests the local United States attorney to file claim with the Federal court concerned, or

(2) Files claim with the Federal court concerned.

c. If the bankruptcy petition is approved, the listed indebtedness to the United States is discharged. The bankruptcy proceedings have no bearing on the liquidation of any new item of indebtedness discovered after the filing of a petition in bankruptcy and not included in the petition.